

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.976 OF 1998

M/s. Vardhman Metal Corporation

..Petitioner.

Vs.

United Air Tech Pvt. Ltd.

..Respondent.

....

Mr. Chirag Balsara i/b Harakhchand & Co. for the Petitioner.

None for the Respondent.

....

CORAM: DR. D.Y. CHANDRACHUD, J.

16th June, 2007.

P.C. :

1. The claim of the Petitioner upon which the Petition for winding up is founded is on the basis of goods sold, supplied and delivered. The statutory notice of winding up dated 5th November, 1997 contains a list of the invoices and the outstanding dues. A demand for the payment of an amount of Rs.17,29,670/- was made. In a reply dated 17th November, 1997 the company did not dispute the bills but denied its liability to pay interest. The reply stated that the account will have to be checked for the goods rejected and that the payments due, save and except for interest claim, would be made

within two or three months after the company received payments from its own customers. The reply clearly demonstrates that there is a debt due and payable.

2. No reply was filed to the Company Petition for winding up. Consent Terms were arrived at between the parties in terms whereof an order was passed on 19th April, 1999. Counsel appearing for the Petitioner states that there was a default in compliance of the Consent Terms, after which a Provisional Liquidator has been appointed. The aforesaid narration of events is sufficient to indicate that there is an inability on the part of the company to pay its dues and that the company has become commercially insolvent. The company has failed to enter appearance to the Company Petition. An affidavit has been filed in respect of the publication of the Petition.

The Company Petition is accordingly made absolute in terms of prayer clauses (a) and (b).